



Ms. Mary L. Schapiro
Chairman
Securities Exchange Commission
100 F Street NE
Washington, DC 20549

Ms. Elizabeth M. Murphy
Secretary Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-45-10

Dear Ms. Murphy:

This comment letter is submitted in response to the Release of the Securities Exchange Commission ("Release"), proposing to adopt final rules to implement Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Section 975") relating to the registration of municipal advisors, published in the Federal Register on January 6, 2011 (Securities Exchange Act Release No. 63576; File No. S7-45-10) (the "Proposed Rule").

Texas Guaranteed Student Loan Corporation ("TG") is a public, non-profit corporation formed by the Texas Legislature, enabled by Chapter 57 of the Texas Education Code, and exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. TG, pursuant to Chapter 57 of the Texas Education Code, must first follow the enabling act by which it was created, but otherwise has all of the powers and rights of a non-profit corporation. The Governor of the State of Texas appoints TG's Board, except that the Comptroller of Public Accounts serves *ex officio* on the Board. TG is subject to open meetings, open records and Sunset Act requirements of Texas state law. The purpose of TG as a non-profit corporation is to administer the Federal Family Education Loan Program ("FFELP") as a guaranty agency on behalf of the federal Department of Education ("Department of Education") pursuant to Title IV of the Higher Education Act.

While TG administers and pays, where warranted, the federal guaranty of student loans under the FFELP, TG does not guaranty the obligations of issuers in respect of securities transactions. TG is not a state agency and does not perform any activity of the executive branch of the Texas state government. It does not receive state appropriations or funds contractually (or otherwise) from the State. TG has no authority of any sort to issue securities or financial products in any form. TG only holds and invests (i) funds which it earns from its guaranty agency activities and which are its property and held in its Operating Fund and (ii) funds which are the property of the federal government and held in TG's Federal Fund, as provided by the Higher Education Act. In addition, TG's is the plan sponsor of a defined contribution pension plan for its employees. The investment of pension plan funds is performed by the Trustees, who are the Pension Committee Members, each of whom is an employee of TG, and none of whom are TG Board members. None of the funds which TG invests are derived from municipal securities except as may result from open market, true, third-party investment acquisition or sales transactions.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") amended Section 15B of the Securities Exchange Act. The Act prohibits a municipal advisor from providing advice

to or on behalf of a municipal entity with respect to municipal financial products or the issuance of municipal securities or the solicitation of a municipal entity, absent the municipal advisor's proper registration with the Securities Exchange Commission (the "SEC"). Municipal advisors must abide by various rules mandated by the SEC and the Municipal Securities Rule Making Board which has regulatory authority over municipal advisors under the Act. In its Release, the SEC has stated that appointed Board members of municipal entities are not exempted from the registration requirement for municipal advisors. However, the SEC is granted authority to exempt municipal advisors from any provisions of Section 15B, subject to the exemption being consistent with the public interest, protection of investors and the purposes of the requirement.

The Proposed Rule regarding municipal advisors is overly broad and seeks to regulate into areas beyond the intention of Congress. The purpose of Congress in regulating municipal advisors is to provide legal and regulatory accountability and oversight in an area which had previously been occupied by advisors, many of whom were unregulated by any federal authority. The purpose of the registration requirement is to provide a platform to supervise and regulate the conduct of those who advise and solicit municipal entities in respect of securities transactions, most particularly those in which the municipal entity serves as an issuer or principal party.

An initial concern of TG arises from the definition of "municipal entity", found in Section 975(e) of the Act. This definition is so broad as to bring within its scope entities formed by the state but which perform no activity of the executive branch of government; do not issue securities, financial products, or proceeds; and/or which, as a result cannot fairly be said to either require or receive any such "advice" or "solicitation." TG is such an entity. Although formed by the Texas Legislature and thereafter performing only activities in the federal arena pursuant to federal law mandates and contractual agreements with the Department of Education, TG would likely be considered a municipal entity merely by virtue of its origin and continuation pursuant to a state law. While TG certainly has its origin and predominant non-profit area of service within the state, it nevertheless serves a *federal* program and a *national* market. Entities which have no role within state government, do not receive appropriations from the State, are self-supporting, do not issue their own securities or financial products or do not engage in activities that are relevant to the types of activities contemplated in Section 15B, should not be considered "municipal entities" solely by virtue of their origin and continued existence by state law rather than private formation or that, being formed and continued pursuant to state mandate, operate only their own bank accounts, invest for their own account in open market transactions and/or provide a pension plan for the benefit of only their employees. Congress provided relief from potential overregulation deriving from the sweeping definition of "municipal entity" under Section 975 by permitting the SEC to grant exemptions to board members of "municipal entities" from the additional requirements and responsibilities imposed by Section 975 for reasons consistent with public policy and overall regulatory necessity. TG urges that entities, such as itself, which are formed by the state but which perform no state executive branch function, are not authorized to issue securities or financial products (or do not) and manage only their own funds, be granted a blanket form of exemption for its board members from municipal advisor registration and any further regulatory compliance under the Proposed Rule. The purpose of the Act is far afield from regulating this kind of board, commencing with the Proposed Rule's somewhat invasive registration process, and is inconsistent with the intention of Congress in promulgating the Act.

Further, the SEC's interpretation of the Act specifically provides that an employee of a municipal entity is not a "municipal advisor," including elected officials and elected officials serving *ex officio*. On the other hand, the SEC has taken the position that non-employee appointed directors should be included in the definition of "municipal advisors." As such, it is unclear as to whether TG's gubernatorially appointed, volunteer board would have to register as a "municipal advisor," and thereby assume the reporting, regulatory and additional legal responsibility that might entail. TG strongly asserts that there should be no difference between the registration

requirements for appointed officials and those for elected or ex officio officials. Adequate oversight for gubernatorially appointed boards exists in Texas state law. Further, state law imposes fiduciary duties on board members, and therefore no additional rulemaking or regulation is required to further underscore this well-settled principle of corporate law. Additionally, TG contends that the purpose of the rule is to regulate those who provide advice regarding financial products. Boards direct and dispose. They may receive advice in the process of those activities but they, either collectively or individually, do not render advice. ***Therefore, municipal entity board members should not be subject to the registration or compliance requirements of the Proposed Rule, whether elected, appointed, or serving ex officio.***

In addition, requiring the registration as a municipal advisor for board members of entities deemed municipal entities such as TG does not seem proper. In the instance of TG, the involvement of the Board in funds investment and management is limited to the collective establishment and oversight of TG's corporate investment policy, which is carried out by TG's employees. It seems a far stretch to deem activities that involve oversight, deliberation and voting on such broad guideline matters of policy could arguably be considered as "advice" or "solicitation" under the Act and the Proposed Rule. In addition, TG is concerned that should its Board members be required to register and comply as "municipal advisors" under any final rule, that factor alone would make it difficult to find Board members willing to serve on TG's Board. Additionally, the costs and efforts of compliance are unwarranted for an entity that engages in none of the activities intended for coverage in the Act, particularly when weighed against little, if any, regulatory benefit.

TG has been provided a copy of the comments of the Attorney General of the State of Texas and believes that those comments properly reflect many of the concerns of Texas state agencies and certain other state-formed entities. While TG may share many of these concerns, it believes that it faces unique circumstances, including its form as a non-profit as opposed to a state agency, the nature and source of its funds, and its lack of authority to issue securities or financial products. Accordingly, TG has submitted the foregoing comment with the SEC to delineate its own unique concerns, which although similar, are not identical to those set forth by the Attorney General of the State of Texas.

Sincerely,



Sue McMillin
President and CEO